

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 21-10529-dsj

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5 In the Matter of:

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7 NINETY-FIVE MADISON COMPANY, LP,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 April 18, 2024

17 10:00 AM

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21 B E F O R E :

22 HON DAVID S. JONES

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re 1) Motion Filed by the Debtors for Entry of an
2 Order (I) Approving the Sale of the Property Free and Clear
3 of All Liens, Claims, Encumbrances and Interests (Except
4 Permitted Encumbrances), (II) Approving the Assumption and
5 Assignment of Executory Contracts and Unexpired Leases
6 Related Thereto, and (III) Granting Related Relief

7
8 HEARING re 2) Application Filed by Gruber Palumberi Raffaele
9 & Fried, CPAs PC, as Accountant, for Allowance of
10 Compensation and Reimbursement of Expenses

11
12 HEARING re 3) Application Filed by Glenn Agre Bergman &
13 Fuentes LLP for Allowance of Compensation and Reimbursement
14 of Expenses

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16 HEARING re 4) Application Filed by Rosenberg & Estis PC for
17 Allowance of Compensation and Reimbursement of Expenses

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: All right. The next case and final
3 case on the calendar is Ninety-Five Madison. Let me get
4 appearances on this one.

5 MR. GLENN: Good morning, Your Honor. Andrew
6 Glenn, Glenn Agre Bergman, and Fuentes on behalf of the
7 Debtor. I'm joined by my colleague Naznen Rahman, who may
8 be addressing some of the matters today for Your Honor.

9 THE COURT: Great. Nice to see you both of you.
10 Yeah, we have a big crowd. Thank you. Actually, let me
11 thank everyone for waiting. I anticipated this might be a
12 long-ish hearing, which is why I put you last. I understand
13 you may have made some progress.

14 Let me just say this. I've got about 14 lawyerly
15 faces visible to me. In the interest of time, I'm not going
16 to take appearances upfront, but everyone -- every time -- I
17 will, in the course of the hearing, give anyone an
18 opportunity to speak who wants it, and then you can just
19 state your appearance at that time. All right?

20 Let me, I think first, stick with the Debtor. I
21 believe there have been sort of ongoing discussions right up
22 to --

23 MR. GLENN: Yeah. Let me -- could I --

24 THE COURT: -- the minute or so. So, tell me
25 where we are.

1 MR. GLENN: Okay. Yes, yes, Your Honor. So
2 today, we have two batches of items on the agenda.
3 Obviously, the big-ticket item is our motion to approve
4 sale. And ironically, after a very lengthy sale process
5 where there was a lot of frustration because there was a
6 lack of developments, over the last 24 hours, there have
7 been many, many developments, including those leading right
8 up to the hearing.

9 We also have a number of, I believe, either
10 largely uncontested or completely uncontested fee
11 applications. And so, we'll take those in whatever order
12 Your Honor requests.

13 But on the sale motion, we have a motion that we
14 filed to approve a sale, and it's outlined, you know, in the
15 motion.

16 THE COURT: Great.

17 MR. GLENN: The motion did not contemplate an
18 auction or any bid protections. I think both we and the
19 purchaser thought it was a pre-emptively high offer and
20 given the significant amount of time that had elapsed since
21 we started the sale process, that this would likely be it.

22 THE COURT: Okay.

23 MR. GLENN: We've had some interest from another
24 party since we filed the motion, and even pre-dating the
25 motion, that did not really progress to the point that it

1 was actionable.

2 What happened yesterday is that we received a --
3 an offer that was higher than the offer that was in the
4 motion. And we contacted Chambers to see whether the Court
5 could accommodate a hearing later today, to the extent that
6 we would be exploring that offer. And the offer was \$65
7 million.

8 What happened overnight is that there were
9 discussions, and further discussions leading up to the
10 hearing today with both the existing buyer and the
11 interesting -- interested buyer. And the existing buyer has
12 agreed to match the \$65 million offer by the competitive
13 buyer.

14 And so, we are prepared to proceed today with the
15 existing buyer, with some revised terms. And I can explain
16 why we're doing that, and what the revised terms are. You
17 know, on the Zoom today, you have obviously the Debtor's
18 representatives. You have counsel for Rita Sklar. The
19 Sklars are on the Zoom as well.

20 But you also have counsel to the buyer and counsel
21 to the competing buyer. And this is all late breaking news
22 and particularly to the competing buyer, they have not heard
23 about this development. So that's where we are. From the
24 Debtor's perspective, we believe this is all good news.
25 It's obviously been a very hectic 24-hour period, but we are

1 prepared to proceed right now to get this transaction
2 approved.

3 THE COURT: Okay. So, let me ask. Is the -- I'm
4 going to give counsel for both the original and the
5 competing buyer some floor time coming up. But let me ask
6 Mr. Glenn. Is the buyer known and vetted and sort of
7 quality checked the compete -- that is the newly arriving
8 competing buyer? Or is that -- or are they a little bit of
9 an unknown quantity?

10 MR. GLENN: What I would say is this. We -- the
11 reason we're going forward today with this matched offer is
12 as follows. The -- we're not going to proceed with any
13 competitive offer without, you know, sufficient assurances
14 that that buyer is in fact a higher and better offer.
15 That's principle number one.

16 Principle number two, our existing buyer gave us a
17 certain period of time to get approval from Your Honor. And
18 today's hearing is outside of that actual date. And so, you
19 know, the process as it now stands, does not allow us
20 additional time to get approval from the Court.

21 So, if we weren't going to proceed with the
22 existing buyer, and that's Madison 29, I'll call them, then
23 we were going to spend the day with the competing buyer
24 getting you know, updated, signed documents, getting a
25 deposit, and a bank account. The buyer asked for additional

1 information.

2 And so, you know, if we were going to go that
3 route, we were going to scramble to get that done. And we
4 obviously were not going to go beyond today without an
5 approved transaction, lest we lose both. And so, you know,
6 I guess what I would explain to Your Honor is, you know, we
7 didn't get final assurances of those matters.

8 I don't have any reason to believe, as I sit here
9 today, that they could not come up with whatever they said
10 they would deliver. I don't have any basis to say they
11 would. I just -- I don't know.

12 THE COURT: Okay. Let me ask this. You've got
13 the proposed purchase price really either original or as
14 revised upward, generates sufficient proceeds. I just want
15 you to confirm this, that all administrative costs of the
16 estate, all -- and all, even general unsecured creditors
17 will be paid in full, right? And then you're going to have
18 surplus funds available for essentially whatever the right
19 word is?

20 MR. GLENN: Yes, Your Honor.

21 THE COURT: But the partners with that ownership
22 interest in the Debtor?

23 MR. GLENN: Yes. So, I'll recap where we are. We
24 confirmed a plan a few months ago.

25 THE COURT: Right. That was my other --

1 MR. GLENN: And --

2 THE COURT: -- yeah, and that has a built-in time
3 limit to finalize this sale.

4 MR. GLENN: Yes. And so, what happened was, we
5 had this toggle idea in our plan. And the toggle idea was,
6 we could confirm the plan, sell the assets, and distribute
7 money to creditors, or we could take down from our exit
8 facility and pay off the creditors. And we chose a hybrid
9 between those two things.

10 So, our exit financier funded after you know, some
11 delays. And so, all of the allowed undisputed gucks have
12 been paid in full in cash. There are remaining disputed
13 claims that have not been paid. Those approximate, I
14 believe, \$4.5 million, to give Your Honor a sense of that,
15 you know, the surplus here.

16 There is the exit financing facility, which is in
17 the neighborhood, I believe, of \$20 million as we sit here
18 today, plus, or minus. And so, that's a very long way of
19 saying, even in a worse-case scenario, there should be, you
20 know, after taxes -- and there could be significant taxes
21 because this is a fee simple sale, and the parties are going
22 to have to address that.

23 THE COURT: Right.

24 MR. GLENN: There will be substantial excess
25 proceeds available to the Debtor after payment of those

1 claims.

2 THE COURT: Okay. So far, you've told me about
3 \$24.5 million of intended recipients, so that leaves \$40
4 million cushion to play with to meet other obligations,
5 including taxes, and then pay people, as well as
6 (indiscernible) --

7 MR. GLENN: I think the worst-case scenario -- in
8 a worst-case scenario, you know, we dispute, you know, the
9 (indiscernible) --

10 THE COURT: Yeah, that -- right. You have to
11 reserve for the disputed claims, right.

12 MR. GLENN: -- disputed claims. So, yes, yes.

13 THE COURT: Okay. Okay, got it. So, let --
14 anything you want to add on the sale? I think you've given
15 me a very concise, but complete recap.

16 MR. GLENN: Yes. So, the revised purchase price,
17 the enhanced purchase price is \$65 million. There are some
18 other terms. I would like to --

19 THE COURT: Oh yeah, walk me -- you were going to
20 describe the other terms.

21 MR. GLENN: -- address (indiscernible) --

22 THE COURT: What are those?

23 MR. GLENN: -- into the record. Yeah, and I got
24 to make sure I read these correctly because they were
25 provided into my email shortly before the hearing. So, it's

1 conditioned on the following terms, that we get a final sale
2 order today, that we not engage with any buyers in any way
3 to undermine, you know, top the sale, do anything in that
4 regard. The buyer would have a right of specific
5 performance if we, you know, don't close, and they want that
6 remedy. We would provide them with a liquidated damages
7 provision, which is a -- you know, basically a break-up fee
8 of five percent if the deal doesn't close because we pursue
9 a competitive buyer or for other reasons within our control.

10 There was a provision in the existing agreement
11 allowing us a 30 -- a one-time 30-day extension for the
12 closing date. And that matter was to address the potential
13 that our two remaining tenants would not be out by the
14 closing date. We have agreed to eliminate that extension
15 right because we now have secured agreements from our
16 tenants, which will include, you know, eviction orders for
17 them to be out within the timeline that we expect in May.
18 So, the closing would be in May, and we're not going to
19 extend that date under our 30-day extension right, because
20 we don't believe we need it.

21 In terms of the five percent, if for some reason
22 we haven't closed through some fault of ours, which I think
23 is quite unlikely, that we would have the right to cure the
24 defaults, you know, on a reasonable basis, and that you
25 know, if anybody challenges the sale in any way, tries to

1 get an injunction, that we would fight that, you know, so
2 that this deal would close.

3 In other words, this is all a long way of saying
4 the purchaser wants, and in fact, deserves finality today.
5 They stepped up and these are the terms that they have
6 required. And Mr. Missry is on, if I have misstated those,
7 and our -- I believe my co-counsel from the Rosenberg Estis
8 is on, if I did not get that correct, I'd invite them to
9 chime in.

10 THE COURT: Okay. Yeah, let's pause and make
11 sure. So, Mr. Glenn just described revised terms, and let's
12 make sure that whoever the participants were in negotiating
13 that are satisfied with how it was articulated and see if
14 they want to add anything else. So, is that Mr. Missry, is
15 where I should turn first?

16 MR. MISSRY: Yes, hi, Judge. Good afternoon.
17 It's afternoon -- oh, it's still the morning. The answer is
18 that Mr. Glenn has faithfully repeated what we agreed to. I
19 do have one clarification, however. The liquidated damage
20 provision of five percent was inserted to protect the buyer,
21 who was approached last night at 6:00 p.m. to increase the
22 purchase price from \$62.8 million to \$65 million, so that
23 the seller doesn't default, so that the seller doesn't
24 change its mind, so that the seller is incentivized to close
25 on the transaction forthwith.

1 THE COURT: Okay. And Mr. Missry, just -- I
2 understood that, but it's fine that you articulate that
3 clearly. Can you just say who you represent?

4 MR. MISSRY: Sure. We represent the buyer. The
5 entity is Madison 29 Holding LLC. We were retained last
6 night at 7:00 p.m. and appeared this morning by filing a
7 notice of appearance with the Court.

8 THE COURT: Great. Okay, thank you. Anything
9 else you want to add while you've got the floor?

10 MR. MISSRY: My partner Steve Cohen is here with
11 me. He may want to add something in here, so I'm going to
12 turn the camera towards him, if you don't mind, Your Honor.

13 THE COURT: That's fine. Hi, Mr. Cohen.

14 MR. COHEN: Hi, good morning, Your Honor. Just
15 one additional clarification to add to Mr. Missry's point on
16 the liquidated damages. Because Mr. Glenn had mentioned, I
17 think somewhat in passing, that if for some reason the
18 Debtor were to pursue another deal, which was -- we want to
19 make clear, that's not acceptable, not part of the revised
20 terms, because we're going into this, and we raised our bid
21 to make sure that does not happen.

22 So, the five percent liquidated damages is just as
23 it says to guard against the seller not closing. But we
24 want there to be no misunderstanding about the Debtor has
25 the right to pursue any other bidders. This is final on

1 what the sale order entered today.

2 THE COURT: Right, okay. I think that was clear
3 from Mr. Glenn's comments, but and -- grammatically, your
4 sentence could be ambiguous, so it's clear the deal is, the
5 Debtor is not to pursue or engage with or encourage other
6 competing deals, right? You've got a specific performance
7 right. You increased your bid amount. You wanted to -- you
8 -- your -- the conditions are what they are. They're all
9 aimed at that, correct?

10 MR. COHEN: Correct, yes. Correct.

11 THE COURT: Okay, I got it. Okay, that's
12 understood. All right. So, let me -- I think that covers
13 me with the intended purchaser proposed and favored by
14 Debtors, unless there's anything else you want to add at
15 this point?

16 MR. COHEN: No.

17 THE COURT: I think -- okay, great. So, let me
18 hear -- I'll just -- well, let me come back to Mr. Glenn.
19 There were objections or limited objections filed with
20 respect to the sale. And what's the status of those?

21 MR. GLENN: I believe there are only two
22 objections, and I believe one of them might be resolved in
23 principle. We can deal with that one, which is the U.S.
24 Trustee engaged with us on the exculpation provision that we
25 included in the order. And I can give Your Honor kind of

1 the legislative history with that. And then --

2 THE COURT: Yeah, I'll tell you, I read the
3 papers. I think if the sale documents met what the U.S.
4 Trustee was concerned, they might read -- they might mean I
5 would've shared their concern if there was an intent to
6 expand the reach of the exculpation clause. But I think
7 your response was, they don't. And I think your reading was
8 right.

9 MR. GLENN: Correct.

10 THE COURT: So that's kind of where I --

11 MR. GLENN: So, it's a very simple --

12 THE COURT: -- came -- yeah --

13 MR. GLENN: Very simple, Judge. We had this
14 exculpation in the plan. Your Honor asked us, and we agreed
15 to cut off that exculpation as of the plan effective date.
16 We wanted to extend to the sale date because there could've
17 been, and thankfully there doesn't appear to be a -- you
18 know, at least as of now, any meaningful litigation with
19 respect to the sale.

20 But we held that in abeyance until the sale was
21 actually here. We've delivered what we believe is a
22 terrific success. And the general partners, all three of
23 them would benefit from this, deserve the protection and the
24 comfort of the exculpation, which had we been able to
25 deliver this in conjunction with the plan, I don't even

1 think this would be in dispute.

2 So, we're -- you know, we're really just -- this
3 is a check back in on this exculpation issue, but we believe
4 this qualifies for what the plan contemplated. And that you
5 know, we shouldn't be penalized because the plan -- you
6 know, we accelerated the plan to benefit the creditors, and
7 we postponed the sale, or we continued to pursue the sale
8 and we're here now. We think the general partners deserve
9 the exculpation.

10 There's no expansion of the exculpation beyond
11 what was included in the plan. If there are any, you know,
12 scrivener's concerns about how that, you know, ultimately
13 you know, was drafted, we're happy to address that, but the
14 concept is very simple. They got the plan exculpation. We
15 held in abeyance. They should get the same exculpation now.

16 THE COURT: Okay. And the -- I want to make --
17 get explicitly on the record. So, the parties that are at
18 issue here, the partners are RSA Property Management LLC,
19 and then Sharan Sklar Management LLC, and then Michael Sklar
20 Management LLC, correct? So, it doesn't extend to the
21 individual principles themselves?

22 MR. GLENN: (Indiscernible). That is correct, I
23 believe, because those are the general partners, yes.

24 THE COURT: Right, and --

25 MR. GLENN: And it's (indiscernible) in

1 conjunction with the sale.

2 THE COURT: -- so, to the extent the individuals
3 benefit from that, so be it, but that's not a function of
4 what I'm doing. That's a function of --

5 MR. GLENN: Correct.

6 THE COURT: -- LLC law. Okay, got it.

7 MR. GLENN: Right.

8 THE COURT: All right. Let -- yeah, let me hear
9 from Mr. Bruh about that. Does that clarification give your
10 office comfort? And where is the -- where is your office
11 now?

12 MR. BRUH: Thank you, Your Honor. Mark Bruh for
13 the United States Trustee. I'm sorry for covering my mouth.
14 We filed the limited objection, and afterwards, I did have
15 discussions with Debtor's counsel over the language. We
16 were concerned it was an expansion.

17 We were unclear as to why it was necessary because
18 we thought the confirmation order made it clear that sales
19 transactions contemplated and conducted post-effective date,
20 the exculpation provision would attach to that so to speak.
21 So, when I saw this new language, I was asking why.

22 And then, as Your Honor said, we thought when they
23 included the trusts as part of the exculpated parties, we
24 were asking why. And I was told that that would be revised
25 to reflect -- that the findings of fact would be revised to

1 mimic the language in the confirmation order, which Your
2 Honor just said would be general partners means RAS Property
3 Management, Sharan Sklar Management LLC, and Michael Sklar
4 Management LLC, and where we are happy with that, and we
5 agreed to that.

6 We also had a concern that the new language had
7 omitted the "as estate fiduciaries," because the exculpation
8 would only exculpate parties, related parties, general
9 partners are related parties, to the extent they were estate
10 fiduciaries.

11 The Debtors agreed that they would revise the
12 language and say no general partner as estates shall -- as
13 estate fiduciaries shall incur any liability to any person
14 or entity. And it goes on. So, it says the same thing, but
15 in a different way. So, with that revision, we would have
16 no objection as well.

17 And as counsel said today, as long as they're not
18 expanding the exculpation or modifying it in any way, as
19 Your Honor approved, pursuant to the confirmation order,
20 then we're satisfied. And that's what we wanted to get into
21 the record.

22 THE COURT: Okay. Okay, thanks. Let me come back
23 to Mr. Glenn. So, I'm certain we're good with respect to
24 the identity of the general partners. That's just been --
25 that's just a clarification issue, really. And are we -- is

1 the Debtor also agreeable to the, as estate fiduciaries
2 language or concept that Mr. Bruh just described?

3 MR. GLENN: I don't know what that means. I mean,
4 you know, they're being released in their capacity as such.
5 I mean, so if you want to -- those entities are being
6 released in that capacity, maybe that's a more precise way
7 to put it. But you know, the -- they're --

8 THE COURT: Well, let me ask. Do -- is -- do they
9 act as fiduciaries for the estate as a whole as a matter of
10 law? I would think so.

11 MR. GLENN: Yeah, I mean, look, they're general
12 partners. They have fiduciary duties under the partnership
13 agreement and under governing law. So, yes. I think that's
14 subsumed within it. But you know, I don't know what that
15 means. And so, I think it's again, more precise to release
16 them or exculpate them acting in their capacities as general
17 partners in connection with the sale.

18 THE COURT: Okay. So, let's -- Mr. Bruh, what do
19 you make of that proposed wording?

20 MR. BRUH: Your Honor, I mean, I go back to the
21 confirmation order. And it says, exculpated parties means
22 collectively, and in each case, in the capacity as such, the
23 Debtor, Debtor's related party to the extent such related
24 party are estate fiduciaries under applicable law.

25 Then you go to related parties, and general

1 partners is listed as a related party. So, they get
2 released to the extent they're estate fiduciaries.

3 MR. GLENN: I see that.

4 MR. BRUH: When that line was --

5 MR. GLENN: Yeah, that's fine.

6 MR. BRUH: -- deleted, that was the concern.

7 THE COURT: -- (indiscernible) -- I think maybe
8 you can stop talking. Mr. Glenn is softly saying, that's
9 fine.

10 MR. GLENN: I agree, I agree.

11 THE COURT: Okay.

12 MR. GLENN: I -- Ms. Rahman gave me that language
13 in red, and I skipped over the red, so that's perfectly
14 fine. My fault.

15 THE COURT: Okay.

16 MR. BRUH: Okay.

17 THE COURT: So, we're good. All right. So, let
18 me -- I'm trying to go sort of handle issues as they arrive.
19 So, I think now, let me say as to the U.S. Trustee's limited
20 objection, I think we've arrived at a place that I'm
21 comfortable with, and that the U.S. Trustee is satisfied
22 with. And so, we'll deem its objection either withdrawn in
23 light of the colloquy, or to the extent it's not overruled,
24 okay? So that'll be my oral ruling with respect solely to
25 the U.S. Trustee objection issues.

1 Okay. And Mr. Glenn, I want to tackle --

2 MR. BRUH: Actually, Your Honor, if I just -- I'm
3 sorry for cutting you off.

4 THE COURT: Yeah, go ahead.

5 MR. BRUH: This is Mark Bruh again. I would just
6 ask that -- I just want to confirm that the language that
7 was sent to me from Debtor's counsel is the language that's
8 going to be inserted into the revised proposed order.

9 MR. GLENN: That's correct.

10 THE COURT: Yeah, I think -- I am hopeful that
11 we're going to approve the order, a sale order today --

12 MR. GLENN: Yes.

13 THE COURT: -- in some form, and you'll circulate
14 it, including to the U.S. Trustee program, so they can lay
15 eyes upon it and say, yes, thank you, we're good. Okay?
16 So, we'll -- that'll --

17 MR. BRUH: Thank you, I was trying to get ahead of
18 it, right, at this point. Thank you.

19 THE COURT: Yeah, no, no, absolutely. Okay, so do
20 you want to also talk about the so-called Branton objection
21 at this point? Or I say so-called --

22 MR. GLENN: Yes.

23 THE COURT: -- because I'm just using a
24 (indiscernible) form entity name.

25 MR. GLENN: Yes.

1 THE COURT: Okay. Go ahead, Mr. Glenn.

2 MR. GLENN: Okay. So, we hired Branton to conduct
3 a sale process as Your Honor knows. That sale process,
4 during Branton's tenure was unsuccessful. We -- the
5 property was marketed to many, many parties, but
6 unfortunately, we did not get a binding offer. And the
7 Branton engagement letter expired by its terms at the end of
8 the year.

9 Part of the Branton engagement letter was an
10 amendment that was undertaken last summer, pursuant to which
11 Branton got indemnity. Because at that point in time, there
12 was, I would call it, more dissension and dispute about the
13 conduct of the sale process and differences about what kind
14 of form the sale might take. And there had been threats of
15 potential litigation.

16 Thankfully, the temperature since then, at least
17 on the sale process, has been taken down quite a bit. And
18 we're now in a position, as Your Honor can see, that there's
19 no pending objection to the sale by any economic stakeholder
20 in the case. You have the U.S. Trustee, and you have
21 Branton.

22 Branton has sought an indemnity reserve and other
23 related relief for that indemnification obligation. They've
24 sought an escrow fund, or general releases from parties that
25 haven't been really identified, but I'm sure we can surmise

1 what they're looking for here.

2 And so, where we are right now is that, you know,
3 the indemnification agreement that Branton received does not
4 require any kind of escrow or any kind of fund. It's an
5 unsecured contractual obligation. And what they're asking
6 for now is something different. It's almost akin to a fee
7 advancement request for claims that have not been asserted -
8 -

9 THE COURT: Right.

10 MR. GLENN: -- may never be asserted. And you
11 know, our view at this point is that you know, the part of
12 the sale motion is that there's going to be a finding, you
13 know, of good faith and connection with this sale, that it's
14 the highest and best offer available to us and -- under the
15 current circumstances. So, we don't see --

16 THE COURT: Can I -- yeah. Sorry, go ahead and
17 finish your sentence.

18 MR. GLENN: We don't see a threat of any
19 litigation that would trigger the indemnification. And so,
20 they have a contract right. If as and when there's an
21 actual claim that is made, which I highly doubt, then we can
22 address this at that point in time.

23 But right now, all they have is an unsecured
24 obligation. And they're not entitled to anything more than
25 that. So, it's not --

1 THE COURT: Right.

2 MR. GLENN: -- an objection to the sale itself.
3 It's ancillary to the objection, and we would ask for the
4 Court to overrule it.

5 THE COURT: Okay. Let me ask a couple of
6 questions. So, is Branton covered by the confirmed plan's
7 exculpation clause and/or confirmation order exculpation
8 clause for their services as broker through the period of
9 their engagement?

10 MR. GLENN: I will have to confirm that. I'm
11 going to ask Ms. Rahman to confirm that while we're on the
12 Zoom. I believe all the professionals and all of the
13 Debtor's representatives were exculpated, but that's just my
14 vague recollection. (Indiscernible) verify that, Your Honor
15 --

16 THE COURT: Right. I mean, in the plan -- I'll
17 tell you my own -- for my own review, brokers were on the
18 list in the plan. The confirmation order dialed back the
19 scope of exculpation somewhat. And it included the
20 fiduciary reference but didn't explicitly eliminate coverage
21 to brokers. So, I think they -- my thinking coming in is
22 that they benefitted from that clause, and that that clause
23 ran through the effective date, which is February 14th of
24 2024, whereas their retention period expired of its own
25 terms December 31 of 2023. Does that sound right to you,

1 Mr. Glenn?

2 MR. GLENN: It does. It does.

3 THE COURT: Okay. I'll turn it to Ms. Rahman,
4 who's just being put on the spot and volunteered. But does
5 that sound right to you?

6 MS. RAHMAN: Yes, I believe so.

7 THE COURT: Okay.

8 MR. BRUH: Your Honor, if I may? It's Mark Bruh
9 for the United States Trustee.

10 THE COURT: Yes.

11 MR. BRUH: Brokers are (indiscernible) as a
12 related party, under these (indiscernible) --

13 THE COURT: Right, exactly. That's what I was
14 just getting at, yeah. Okay, so all right. So, I think,
15 look, I'm going to hear from Branton, but my leaning coming
16 in is -- aligns with the Debtor's reaction, and that Branton
17 has not identified any actual claim against it or any even
18 threatened claim, anything that triggers a current need for
19 or entitlement to an indemnification payment. And further,
20 the -- its exposure is very limited because its retention
21 expired at the end of 2023. And it's already covered by an
22 exculpation clause in the plan anyway.

23 I would just add on my own that I looked also at
24 the confirmed plan. The confirmed plan contemplates this
25 sale to be followed by distributions. And there's a whole

1 distribution scheme set forth in the plan, to which -- at
2 which time, at the time of confirmation, Branton could've
3 sought protections and a more long-lasting or funded
4 indemnification entitlement, and it didn't seek that or get
5 it.

6 So, I don't see a basis to impose that requirement
7 now, superimposed on the sale that was already contemplated
8 to occur by the previously approved plan. So that's my
9 thinking coming in.

10 Having said all those unreceptive things, let me
11 just offer the floor to whoever's here for Branton and see
12 if you want to pushback on any of that,

13 MR. CARROLL: Yes, Your Honor. Thank you. This
14 is Schuyler Carroll of Manatt, Phelps and Phillips. And
15 Your Honor, let me first say, we would be very pleased if
16 everything that you and Mr. Glenn said turned out to be
17 true. We have no interest of ever having to use the
18 indemnification protections, and particularly glad to hear
19 that it appears all of the partners have put aside their
20 differences.

21 But what we are concerned about, Your Honor, is
22 unfortunately, as we've all seen, anyone can bring a suit,
23 even as meritless as it may be. So, based on our experience
24 in the case, we were concerned, and still are concerned,
25 that a litigation might be commenced by one of the general

1 partners, that the plan provides, as you said, for all
2 administrative expenses to be paid. But the sale provides
3 that all proceeds will be distributed before our claim could
4 be paid potentially. We're not asking for --

5 THE COURT: But you -- I'm sorry, let me jump in.
6 You don't now have a ripe claim, right? Like, nobody's sued
7 you. Nobody's -- you're not incurring legal expenses, are
8 you, at this time, in connection with your work?

9 MR. CARROLL: You are correct, Your Honor. And
10 again, we are hopeful we never will.

11 THE COURT: Okay, got it.

12 MR. CARROLL: So, the issue we have is the plan
13 provides for all administrative expenses to be paid, but the
14 sale provides for all the proceeds to be distributed. So,
15 to the extent that a potential outcome here is the sale
16 closes, the proceeds are distributed, and a day later, a
17 litigation is commenced against us, as meritless as it may
18 be, our indemnification rights would essentially be stripped
19 because, as Mr. Glenn said, we have a contractual right as
20 against the Debtor. But the Debtor will have no assets, so
21 --

22 THE COURT: I -- yeah, no, I -- look, I understand
23 the concern. I just don't see -- I question whether you
24 have an entitlement on behalf of Branton. But because
25 there's no currently ripe admin claim, the plan was

1 previously confirmed and included a contemplation of
2 distribution of all proceeds at the end of the sale
3 processes. So, I guess what's your pushback for that, from
4 that? What's your entitlement?

5 MR. CARROLL: Well, I think, Your Honor, what I
6 would say is, all of the relevant parties are here. And all
7 of the relevant parties could state on the record that they
8 will not bring a claim.

9 THE COURT: Well, I was thinking --

10 MR. CARROLL: And then this is very plain and
11 simple.

12 THE COURT: Let me interrupt you. I was thinking
13 of doing that, and maybe you'll get some comfort, but I'm
14 not sure that -- even as -- I guess I'm a nice person, so
15 I'm happy to work the room. And I need to hear that for
16 purposes of approving the sale or not approving the sale
17 anyway.

18 But I will say, I just -- right -- well, I think
19 I'll stop talking. Let me do this. I'm going to formally
20 reserve decision at this time on the Branton objection,
21 pending further input from all parties. And Mr. Glenn, help
22 me remember to come back and make sure I button that down
23 for record purposes, okay?

24 Let me circle the room. Let me start with Mr.
25 Karcher, who's come into the case in a very welcome and

1 constructive way, as from what I can tell, although I only
2 see things from afar.

3 MR. KARCHER: Yes.

4 THE COURT: Can you say anything that might, with
5 respect to the sale overall, and then --

6 MR. KARCHER: Your Honor -- yes, (indiscernible)
7 aware --

8 THE COURT: Yeah, go ahead.

9 MR. KARCHER: Yeah. I'm sorry, Your Honor. I
10 didn't mean to interrupt.

11 THE COURT: Go ahead. I speak in run-on tangled
12 sentences and mess people up all the time, sorry about that.

13 MR. KARCHER: Yeah, let me just say with respect
14 to Branton, I'm not aware of any claims against Mr. Branton.
15 I have not discussed it with my client. I'm -- I just --

16 THE COURT: Okay. And your plan, just -- and to
17 make sure, as everyone knows, it's RAS.

18 MR. KARCHER: RAS Property Management.

19 THE COURT: Okay. And what is the view of RAS
20 Property Management with respect to the sale, including the
21 modified purchase price and terms described by Mr. Glenn
22 today?

23 MR. KARCHER: Yeah, that, I have to say, I was
24 delighted to hear that there's been, I guess what I'll call
25 a mini auction in the last 24 hours. But the first I heard

1 of it was the same time Your Honor heard of it.

2 And so, my quick notes are that the parties aren't
3 allowed to engage in any way with any other parties between
4 now and the closing, and the liquidated damages of five
5 percent. Those to me seem like the types of things that you
6 might get if you actually had like a backup bidder or
7 somebody to rely on in the event that the sale did not close
8 with this particular buyer. And my concern is that if it
9 doesn't close with this particular buyer, there -- the
10 Debtor has an obligation to pay off the DIP loan, which
11 turned into exit financing by the dates certain.

12 And so, I think from our perspective, we would
13 have much greater comfort if we had an alternative buyer in
14 the wings to the extent that, through no fault of the
15 Debtors, the deal didn't close by the time we had to pay off
16 the DIP.

17 I also think that just at -- in general,
18 preventing the partners from speaking to alternative buyers
19 would seemingly be contrary to their fiduciary duties.

20 THE COURT: Well, why doesn't this -- the
21 following analysis work? Debtors -- it's not an absolute
22 rule that property be sold through an auction process. And
23 if a Debtor comes to the Court saying we have done a robust
24 marketing process, and worked really hard, and we have
25 formed the informed business judgment that this is the best,

1 most lucrative path forward for the -- and most beneficial
2 to the estate. And we want you to approve this sale without
3 undergoing an auction process, then the Court, I think can
4 approve that. And isn't this -- isn't that what's happening
5 here, just with the happenstance that another offer came in
6 and pushed up the price a little over \$2 million?

7 MR. KARCHER: It is, Your Honor. But the concern
8 stays, that you know, if the sale doesn't close, there is a
9 -- an obligation to satisfy the loan.

10 THE COURT: Okay. So, let me --

11 MR. GLENN: May I respond?

12 THE COURT: Yeah, let me -- I was going to ask you
13 to. Go ahead. That's Mr. Glenn.

14 MR. GLENN: Thank you, Your Honor. So, our
15 calculus on this matter is as follows, Judge. I think the
16 law is very clear that once the Court issues an order, it's
17 final, and we can't have an auction. We can't revisit the
18 order, even if someone comes in with \$10 more million.

19 I think you know, at some point, the process is
20 final, and this order that we have to get, you know, today,
21 is going to provide that finality. We have no ability after
22 that order is entered -- and I don't believe the Court has
23 any ability, absent fraud, which is clearly not the case
24 here, to revisit this and open the process back up.

25 And I'm sure this transcript will you know --

1 these words on -- which are very strong, and declarative
2 would be used against me if we ever attempted to do that.
3 And so, the granting of this breakup fee, I view as
4 basically a nominal concession to the buyer because we can't
5 revisit the sale. And so, there's really not going to be a
6 breakup fee.

7 Our obligation to turn over the property is
8 subject to basically title and the tenants leaving. It's
9 not an operating building in, you know, any meaningful
10 sense. So, I don't believe there's any risk of anything
11 happening between now and the closing.

12 And so, all these things that we're saying,
13 specific performance, the liquidated damages are from, you
14 know, my view, a buyer who deserves some sympathy for
15 stepping up and asking for reasonable concessions because
16 they have stepped up. And you know, I'll fight hard for
17 them because I think they're entitled to this.

18 THE COURT: Right. Can I ask this? Is -- I don't
19 think anyone's saying they're not entitled to protection in
20 the event the Debtor walks away. So, do they get their --
21 whatever, functionally breakup fee, if they choose to walk
22 away and abandon the deal or fail to close for any reason?

23 MR. GLENN: No, no, no.

24 THE COURT: Okay.

25 MR. GLENN: That's only -- it's a one-sided thing

1 we have to -- we're the ones that have to breach. And we
2 have a cure right, and there's going to be other -- you
3 know, if a third party comes in and tries to do something
4 outside of our control by way of an injunction, that's --
5 it's really to keep us honest, so that they're assured that
6 we're going to follow through with this after this last-
7 minute hiccup.

8 MR. MISSRY: Yeah, I'd like to add a couple of
9 things, Your Honor, if you don't mind? This is Morris
10 Missry --

11 THE COURT: Yeah, just say your name for the
12 record. Go ahead.

13 MR. MISSRY: Yeah, Morris Missry.

14 THE COURT: I see.

15 MR. MISSRY: Our client has stepped up to the tune
16 of \$2.2 million in additional purchase price. The
17 liquidated damage provision would yield them \$3 point
18 something million if the seller breached and decided not to
19 sell to us. Given that there'll be a final sale order, we
20 don't see that happening.

21 THE COURT: Yeah.

22 MR. MISSRY: Additionally, my client has posted
23 \$4,710,000 as an initial deposit, and has an obligation
24 within five days after the issuance of the sale order to
25 post another \$1,570,000. So, it will have \$6.28 million up

1 as a deposit with the seller's title insurance who -- would
2 sit with the escrow agent. So, if it defaulted, to Mr.
3 Karcher's point, it will have forfeited close to \$6.3
4 million. So, it's not going to happen. We're ready to
5 close.

6 THE COURT: Okay.

7 MR. MISSRY: If the tenant was out tomorrow, we'd
8 close tomorrow. Right now, the assumption is we're going to
9 close all equity, so we're not relying on third parties.
10 We're ready to go. And we were cajoled, if you will, Your
11 Honor, last night to put up another \$2.2 million, which will
12 benefit all of the partners in this deal.

13 THE COURT: Okay, got it.

14 MR. GLENN: And I want to raise one other point,
15 because Mr. Karcher did raise what we believe is a very
16 valid point, which is the exit financing, okay. We -- this
17 was on the general partners' list of significant concerns.
18 And I want to explain how those were ameliorated.

19 Mr. Karcher is absolutely right that there was --
20 there's a maturity date in our exit financing of around the
21 end of this year. And we were very concerned if the closing
22 date for this transaction, Your Honor, extended into the
23 summer -- late into the late summer, early fall, in which
24 case, you know, God only knows where the market would be,
25 and we would have to scramble to find a replacement --

1 THE COURT: Right.

2 MR. GLENN: -- purchaser. So, we did a couple
3 things. And the buyer has now helped us. We have these two
4 tenants. And we were concerned that they were not going to
5 exit in a timely way. And we now have arrangements in
6 place. And this is why it's a good thing that we've lost
7 that ability to extend the closing, because we don't need
8 it, number one.

9 And number two, if this buyer, by some, you know,
10 unforeseen problem doesn't close, Mr. Missry is absolutely
11 right, we have the right to have Your Honor adjudicate on an
12 expedited basis, whether that deposit comes to us. In that
13 circumstance, that would provide us with additional capital
14 and the ability to get a replacement buyer in a much more
15 comfortable period before that exit financing actually
16 matures. So --

17 THE COURT: Okay, got it.

18 MR. GLENN: -- what Mr. Karcher said is right.
19 And it was definitely on our minds as we navigated this
20 process.

21 THE COURT: Okay. So, let me do the following.
22 I'm going to acknowledge, I'm supposed to be attending a
23 judge's meeting that's starting pretty soon, so I'm trying
24 to move expeditiously through the hearing and yet get this
25 full entire hearing in. And you get dibs, but I just want

1 to let you know I'm going to try to steer the ship.

2 Mr. Barr, I'm going to come to you in a second,
3 but let me come to Mr. Karcher. But let me just ask. Is
4 RAS comfortable with the basic terms of this sale?

5 MR. KARCHER: Yes, Your Honor. We appreciate Mr.
6 Glenn's (indiscernible) --

7 THE COURT: Okay. And let me give representatives
8 of the other two general partners a chance to -- well, who's
9 here for the other two general partners?

10 MR. KARCHER: They don't have separate counsel.
11 Only Ms. Sklar, RAS property has separate counsel.

12 THE COURT: Okay, okay.

13 MR. KARCHER: But they did --

14 THE COURT: So, I'll just -- yeah, go ahead.

15 MR. KARCHER: Yeah. They did confirm to me that
16 they have no interest in pursuing any claims against Branton
17 Realty, in response to Your Honor's concern.

18 THE COURT: Okay. Got it.

19 MR. KARCHER: And so, I (indiscernible) confirm
20 that.

21 THE COURT: All right, thank you. Let me come to
22 Mr. Barr. Go ahead, thanks for your patience.

23 MR. BARR: Thank you.

24 THE COURT: Oh sorry. You just muted yourself.
25 Having unmuted you. I think you doubled clicked.

1 MR. BARR: Sorry about that. Sorry. I think that
2 Mr. Karcher's point about being able to pursue other buyers
3 in the pendency of the action was not really addressed. I
4 thought my perception is that the argument switched
5 immediately to the five percent breakup.

6 THE COURT: Hang on a second, Mr. Barr. Who do
7 you represent?

8 MR. BARR: I represent the estate of Lois
9 Weinstein. They own --

10 THE COURT: Oh, yes.

11 MR. BARR: -- (indiscernible) percent equity
12 (indiscernible). And under the -- anyway.

13 My greatest objection -- I have no objection to
14 this sale. I'm -- and I'm pleased that the price has
15 increased. My concern is with respect to the five percent
16 breakup fee. My feeling is that it's an unusual term.

17 And given the circumstances that the -- that
18 there's a lot of unknowns out there, I think that the
19 Debtor's counsel's being a little optimistic that there are
20 no problems. I can think of about three that would derail
21 or delay the closing. And if that triggers a \$3,250,000
22 payment to the buyer, that's problematic to me.

23 I think that the cure period may not be
24 sufficient. I can think of three problems. One, the estate
25 of Lois Weinstein owes money to the Internal Revenue

1 Service, the U.S. Treasury. I can conceive, and have been
2 told, that we have a 61-66 exemption to defer payment of
3 taxes. However, that has to be secured by property.

4 It is my understanding that the IRS intends to
5 lien Ninety-Five Madison Avenue. If that happens, obviously
6 it can be resolved but maybe not in a minute. And maybe
7 that's a process that would take longer than the cure
8 period.

9 Another problem that I perceive is that the title
10 company may, in its due diligence, come across this decision
11 from October of 2020, dissolving Ninety-Five Madison. That
12 may create an issue as to whether a certificate of good
13 standing, which is generally required from the Secretary of
14 State in this kind of transaction, you know -- it may cause
15 a lot of questions.

16 Title companies tend to be concerned about not
17 having any liability at all for anything. And so, they come
18 up with objections that don't seem reasonable, but still
19 have to be dealt with. So, I am very concerned that there
20 may be delays with respect to title that are unforeseen.

21 And that I would therefore suggest that if there
22 is to be a breakup fee of \$3,250,000 payable by the seller,
23 that that would be limited only to instances where there is
24 a willful default, which would be the (indiscernible) --

25 THE COURT: Well, okay, look -- I mean, I think --

1 MR. BARR: Sorry, Your Honor.

2 THE COURT: So, yeah, let me -- so, let me just
3 try to recap. So, you have concerns particularly focused on
4 the five percent breakup fee. You'd like -- you just said
5 you'd like the willfulness component to be introduced to
6 that. But the estate of Lois Weinstein does not have a
7 problem with basically the terms of the sale. On offering,
8 you'd like this transaction to close successfully and
9 generate proceeds, right?

10 MR. BARR: Yes, absolutely.

11 THE COURT: Okay, got it. Let me hear from Mr.
12 Glenn in response to that concern.

13 MR. GLENN: So --

14 THE COURT: I think the answer may be, you got an
15 -- sorry, I'm going to cut you off and say things that occur
16 to me. The potential breakup fee exposure of \$3.2 million
17 is accompanied by an increased purchase price commitment of
18 \$2 million plus, which eases the pain. And these are
19 demands made by the purchaser in connection with its
20 willingness to lock in, including play ball at a higher
21 purchase price. But let me let Mr. Glenn augment those
22 thoughts.

23 MR. GLENN: So, yes. So, Your Honor, you
24 articulated that ultimately, what we're here for today, the
25 standard of review is business judgment and the general

1 partners. And now, we've heard it's unanimous, agree that
2 this is the best available transaction under the
3 circumstances.

4 But again, like I did with Mr. Karcher, the notion
5 that we couldn't clear title, you know, and get title
6 insurance is certainly a concern. You know, Mr. Barr and I
7 have a lot of differences, and we will continue to. But
8 again, that's a concern that any seller has.

9 What I would say mitigates that one is that we
10 just went through this process with the exit financing
11 facility. We cleared the title company in that circumstance
12 two months ago. There's no new title issues that have
13 popped up.

14 If what Mr. Barr is referring to is a tax lien
15 that would be imposed, he's not talking about a tax lien on
16 Ninety-Five Madison. He's talking about a tax lien on the
17 estate of Lois Weinstein, which may realize on the Weinstein
18 interest in Ninety-Five Madison. So, I don't view that as a
19 circumstance, where the IRS would have the ability to enjoin
20 the sale.

21 And Your Honor, as part of the sale order, is
22 going to provide the title company with significant comfort
23 that the sale is actually free and clear of all claims and
24 interests, including a potential tax lien of the IRS. And
25 that would attach to the proceeds.

1 So, what I would say to the Court is, number one,
2 the partners are mindful of concerns such as that. Number
3 two, I think that's a very unlikely circumstance. Number
4 three, I guarantee you, if anybody, whether it's the IRS or
5 the plumber for the building tries to hold up the sale by
6 putting in some lien, we are going to be back before Your
7 Honor on an expedited basis to address that because I would
8 view that as a frivolous, certainly non-meritorious legal
9 action that a party would take.

10 THE COURT: Got it. And I think one thing I'll
11 just add is that no one is here on behalf of the IRS, and
12 this is noticed as a proposed free and clear sale. So that
13 aligns with your comments. I did just want to observe the -
14 -

15 MR. GLENN: Yeah.

16 THE COURT: -- absence of objection presented
17 timely today or prior today -- to today for -- by the IRS.
18 Okay. So that's helpful. Mr. Barr, if we -- I think we've
19 covered -- anything else you want to add? I'll give you
20 that opportunity.

21 MR. BARR: Thank you, Your Honor. I just wanted
22 to say that the five percent fee, I think should be limited
23 to willful default. I think that it's a (indiscernible)
24 provision.

25 THE COURT: (Indiscernible) --

1 MR. BARR: And my words of wisdom to everyone is,
2 with respect to real estate transactions, it's always a
3 mistake to reinvent the wheel. So, to put something in a
4 contract you don't know what the consequences are, it may
5 make sense the day you put it in, but it ultimately is
6 something that you will learn is a mistake.

7 THE COURT: Okay. Mr. Glenn, and I'll give the
8 purchasers -- proposed purchasers a chance to speak to the
9 idea of inserting a willfulness requirement on the breakup
10 fee.

11 MR. GLENN: Yeah, I think we're comfortable with
12 how things are. And again, if by some chance that this is a
13 default on behalf of some obligation that we have, there is
14 a -- there's going to be a cure period, a reasonable cure
15 period for us to address that.

16 You know, obviously, you know, Mr. Barr is trying
17 to renegotiate the deal that was negotiated at arm's length,
18 you know, last night and this morning. And so, that's not
19 the deal. So, I would turn that over to Mr. Missry because
20 you know, if he agrees to it, that -- great. But we're, you
21 know, again, I want to compliment Mr. Missry and his client.
22 They did -- they stepped up. And I don't think the deal
23 should be recut, given what they've done. If he -- if he's
24 acceptable to that, amenable to that, fine. But we're here
25 to defend the deal that we've agreed to.

1 THE COURT: Okay, Mr. Missry, anything you want to
2 say about the proposed insertion of a willfulness
3 requirement?

4 MR. MISSRY: Yes, Your Honor. We don't agree to
5 that. There are very few obligations of the seller under
6 the purchase and sale agreement. Your Honor can take a look
7 at it. And I've been doing this for quite some time. We do
8 a tremendous amount of real estate work.

9 This isn't a breakup fee. This is a liquidated
10 damage provision. And the provision was negotiated. We're
11 happy to pay \$62.8 million, Your Honor, and have Your Honor
12 issue the sale order on that basis. But as Mr. Glenn and
13 his co-counsel, Mr. Lefkowitz have done and said to us, we
14 have a deal. They're going to honor the deal. I have full
15 faith and confidence in the seller and the general partners
16 that they will sell the property to us on this basis.

17 And so, we're not going to entertain, or we don't
18 want to entertain Your Honor, any type of paranoid, wild
19 theories that someone may espouse, when this is a simple
20 real estate deal. There aren't many representations. There
21 aren't any tenants really, in the building. This is a
22 simple real estate (indiscernible) --

23 THE COURT: Okay, I got it. Let -- I'm going to
24 cut you off, Mr. Missry. So, I -- like, you know, there's
25 the famous sentence, you had me at hello. I really wanted

1 to hear a yes or a no.

2 MR. MISSRY: Okay, sorry.

3 THE COURT: And I don't need your full rationale.
4 So, the deal on -- so that's not acceptable to the
5 purchaser?

6 MR. MISSRY: No.

7 THE COURT: Okay. Let me see if there's anyone
8 else who wants to be heard on the sale before I get to
9 ruling. Does anyone else want to be heard?

10 MR. ROSENBERG: I do, Your Honor. Good afternoon.

11 THE COURT: Yes, go ahead, Mr. Rosenberg.

12 MR. ROSENBERG: Yes, hi. Arthur Rosenberg of
13 Holland and Knight, LLP. We are counsel for the competing
14 purchaser, which is a company called Madison 95 Associates
15 LLC. We have been involved in negotiations. My client has
16 been involved in negotiations with the Debtors in this case
17 for months and months and months, since at least the
18 beginning of the year.

19 This is not a -- it's a last-minute hiccup, I
20 think it was referred to as. We've been dancing with them
21 for a while, and this dance just, everything takes longer
22 than it should take. I've been practicing bankruptcy law a
23 long time in the Southern District. That's nothing great
24 about me.

25 But, and generally, a stalking-horse structure is

1 not the rule. It's not in Section 363. It's not required.
2 But generally, it's what happens in the Southern District
3 and throughout the rest of the country. And there's a
4 reason for that, which is because it sets up a fulsome and
5 proper and guardrail, properly guard-railed auction.

6 What happened here was, the Debtors filed this
7 motion, which they are absolutely within their rights to
8 file in this case, but it was done differently than usual.
9 I believe some of the people or maybe two of them said,
10 don't reinvent the wheel for this case.

11 And I know they're not reinventing the wheel, but
12 certainly, the motion that they filed here was the exception
13 rather than the rule. And our client reached out almost
14 immediately to Mr. Glenn and his cohorts and their people at
15 Rosenberg and asked this and said, hey, wait a minute,
16 shouldn't this be in the form of an auction and a stalking-
17 horse. And the answer was, hey, we can keep talking, don't
18 worry, we're going to keep talking. And my client has been
19 back and forth and back and forth.

20 The issue with -- and you know, we apologize for
21 taking so much time, but number one, things have just taken
22 a lot of time on both sides. Number two, it's not as easy
23 as you think to raise \$65 million. You would think it's
24 easy, but it's not.

25 And the reason Your Honor, for the stalking-horse

1 structure being followed is, number one, it's standard,
2 number two, it works, number three, it sets up very
3 definitive guidelines for an auction.

4 What we have, Your Honor, at this point, is an
5 auction that has occurred extemporaneously unintentionally
6 based on the manner in which the motion was filed. In fact,
7 the \$5 million breakup fee is what I see as an ex post facto
8 breakup fee that would have been talked about months ago
9 when the motion was filed, would've been decided in
10 connection with the bidding procedures. They were very
11 informal. There were no bidding procedures here, Your
12 Honor. So that, as a result, you know, our client did this,
13 they did that.

14 And again, I'm not speaking bad of anyone, or you
15 know, giving -- casting aspersions on anyone here. But this
16 is a kind of dance that would have been done much better
17 under the strictures of a stalking horse bid, and not under
18 the strictures of something that was bid. Because, yeah, we
19 sort of ran out of people. I mean, they didn't run out of
20 potential buyers here. I will tell you, Your Honor, my
21 client was absolutely speaking with them at the beginning of
22 the year. This motion sort of came out of left field as a
23 surprise. We thought this was going to be a standard
24 stalking horse motion, and it was not.

25 So, you know, look, stalking horse motions are not

1 necessary. They're not required. But the type of motion
2 that when here, everything has to be so buttoned up, I had a
3 former senior partner who used to say, as pure as Caesar's
4 wife. He was (indiscernible), he said that.

5 But it has to be as pure as Caesar's wife in this
6 case. It has to be as clean. And the way I see it, Your
7 Honor, especially last-minute issues arising, the -- it's an
8 auction, but it's not an auction. The way I see it is,
9 unfortunately, the way that this things were structured was
10 a way that might work in most -- in many cases, but if it
11 really gets to a fulsome auction, where parties are going
12 back and forth a lot, it just is not the best way at all.
13 And in fact, it's the worst way.

14 I can't tell you that my client would be willing
15 to go higher than 65. Although, if you give me five
16 minutes, I can call him and ask what they'd be willing to go
17 to. I mean, that came out of left field, too, just the way
18 things are going.

19 My client has submitted several auctions --
20 several bids, my apologies -- several bids over the last
21 week or two. But the last bid they did, I thought was
22 higher and better, but it was not an apples to apples bid.
23 I understand. They wanted all cash, but my client thought a
24 better deal was to go in a different direction. Complete
25 discretion, I get it.

1 But you know, what's happening here, and I
2 understand that this is 100 percent, theoretically, at
3 least, 100 percent plan, which may make things a little
4 different. But what's happening here is, we're going
5 through the auction process, without the common guardrails
6 that are normally here.

7 And again, the five percent breakup fee last
8 second, the counterbid last second, if this were a standard
9 stalking horse structure, we would be sitting in Mr. Glenn's
10 office and, you know, re-handing envelopes across a table or
11 something like that, which would --

12 THE COURT: So, Mr. Rosenberg, let me just ask. I
13 appreciate everything you're saying, but you say your client
14 was engaged with the Debtors for a substantial period, I
15 guess it's early this year. And I -- I'm just looking back
16 at the transcript from the combined confirmation and
17 disclosure statement hearing, which set an outside date for
18 completion of the sale process of June 30th, right? So, and
19 that's not an accident. This sale process has been tortured
20 it's and gone way beyond what was desirable and needs to be
21 brought up to compensate the beneficiaries of the estate.
22 And so --

23 MR. ROSENBERG: Sure.

24 THE COURT: So, my concern is, you're sort of --
25 you know, to sort of critique the process and suggest it be

1 opened up is -- strikes me as a little bit untimely. I
2 mean, I will say, I appreciate the value of an auction.
3 Almost always, I prefer an auction. There's nothing that
4 determines that you're actually achieving market value
5 better than an auction.

6 But in this case, there's been such a robust and
7 tortured and long-running marketing process, that I think
8 it's, you know, again, as Mr. Glenn has reminded me a couple
9 of times, and is correct, it's a business judgment standard.
10 And I do see reason to -- for the exercise of business
11 judgment that's on display here today. So, I guess to
12 translate that to a question for you, is there any failure
13 to meet the business judgment standard that you see here?

14 MR. ROSENBERG: Well, two quick responses on that.
15 Number one, my firm was brought in, and that's just -- my
16 firm was brought in, and that's just my firm, maybe it's my
17 client's fault, was brought in after the confirmation
18 hearing, like three days after or something like that. So,
19 we didn't have the chance to speak up there and see what was
20 going on.

21 And number two, we are willing to close within the
22 guidelines set out in the plan June 30th, et cetera. I'm
23 sorry, Your Honor, my new office automatically, the lights
24 go off --

25 THE COURT: Oh, you have one of those auto-dimming

1 light features. Yes, you need to gesticulate more.

2 MR. ROSENBERG: Hold on. I'll talk -- I would
3 talk -- there we go. I would talk with my hands more.
4 Normally, I do. But on Zoom, it's difficult.

5 THE COURT: Okay.

6 MR. ROSENBERG: So, we would be willing to go on
7 that. But we've gone through. But we certainly have been
8 out there. We're not a last-minute hiccup.

9 THE COURT: Okay, I've got it. But you're not
10 giving me a legal -- you know, a legal objection, really.

11 MR. ROSENBERG: I mean, I agree with you, Your
12 Honor. It's the discretion. It's the business judgment.
13 Look, I mean if you have two offers that are roughly the
14 same, you can go with A or you can go with B.

15 THE COURT: Okay.

16 MR. ROSENBERG: Even if (indiscernible) higher.
17 Even if B is higher, you theoretically could go with A
18 because it's a bird in the hand, rather than two in the
19 bush.

20 THE COURT: Okay, I've got it. Does anyone --
21 thank you very much, Mr. Rosenberg. Does anyone else want
22 to be heard with respect to the proposed sale?

23 MR. CARROLL: Yes, Your Honor. This is Mr.
24 Carroll again on behalf of Branton. I'll be very quick,
25 Your Honor. I just wanted to say that Mr. Glenn started off

1 earlier by saying that Branton was not involved in the sale.
2 You may have noticed, Your Honor, a while back we filed a
3 stipulation adjourning the time for Branton to file a fee
4 application.

5 We have some concerns about whether or not this
6 buyer was procured during the time period of Branton's
7 exclusive brokerage. We will address that in the future. I
8 just didn't want silence to be --

9 THE COURT: Okay. So, I'm going to view that as a
10 reservation of rights, but I will note, there was a
11 representation and/or sworn statement in the record leading
12 to the sale bidding that Branton was not involved in the
13 acquisition or development of this purchaser. Mr. Glenn, do
14 you want to say anything?

15 MR. GLENN: Yeah, that's correct. The -- this
16 buyer emerged after their contract was terminated. And our
17 position is that there's no fee earned as a result of that.

18 THE COURT: Okay.

19 MR. GLENN: But you know, they're free to file
20 whatever they're going to file.

21 THE COURT: And that'll be dealt with another day
22 if necessary?

23 MR. ROSENBERG: May I be heard, Your Honor, on
24 that point? This is --

25 THE COURT: Who is that?

1 MR. ROSENBERG: -- Mr. Rosenberg?

2 THE COURT: Yes.

3 MR. ROSENBERG: Hi, this is Mr. Rosenberg again,
4 my apologies. If you can hear me. We -- as part of our
5 bid, we agreed that we would take care of Mr. Carroll's
6 client, whatever is owed, so that it would be outside of the
7 purview of the purchase price. So, theoretically, to the
8 extent -- our bid may generate more money in that event,
9 because I think it was fairly clear that Mr. Heller and his
10 company at Branton was involved in our client, not -- maybe
11 not so much on the others.

12 So that is in one way, our -- the way our bid is
13 better, as opposed to just higher. But again, I understand
14 business judgment is business judgment. I would just think
15 that you know, you don't want to set bad precedents in this
16 case for that.

17 THE COURT: I certainly don't want to set bad
18 precedent ever. That's -- so, yeah, Branton is Mr. Heller's
19 firm, is that right?

20 MR. GLENN: Yes.

21 MR. ROSENBERG: Yeah, my apologies, yes, sir.

22 THE COURT: Okay. I don't want to fail to say I
23 still recall the arrival of Mr. Heller on the scene, and the
24 confidence he inspired among a lot of people. So, I do
25 acknowledge the, I guess reputation he enjoys and the

1 confidence that his participation inspired in a lot of
2 people. So, I felt like that's worth saying while we're at
3 it.

4 Okay, let me -- but let me come back to Mr. Glenn
5 and see if you have any wrapping up comments. I think we've
6 heard from everybody actively participating who seems to
7 want to.

8 MR. GLENN: Yes. So, Your Honor, with respect to
9 Mr. Rosenberg's comment about the brokerage, that was
10 communicated in his client's offer that Mr. Heller's firm's
11 fee would be paid by them. And so, the general partners
12 assessed that, and they have determined to move forward with
13 the existing buyer.

14 So again, subject to business judgment, that's
15 their view. I don't have anything to add. I think we've
16 covered everything (indiscernible) --

17 THE COURT: Okay. Let me ask one thing that I
18 want to make sure I have from somebody's mouth besides --
19 well, really from your mouth, is that the judgment of the
20 Debtor and its principles, that going forward with the sale
21 as proposed, sort of the favored purchaser is the most
22 likely to timely close?

23 MR. GLENN: Yes. So, right now, it's our
24 assessment that this is the highest and best offer with the
25 least amount of execution risk.

1 THE COURT: Okay, thank you. All right. I
2 appreciate everybody's arguments and the work that's gone
3 into this, and I am prepared to rule on the sale motion. As
4 follows, I'll say there's going to be a significant proposed
5 sale order that's going to contain all of the necessary
6 legal findings and legal conclusions.

7 And I expect to enter a version of that. I'll ask
8 that it be circulated and submitted in Word as with the
9 mutual agreement of the -- certainly, the relevant parties,
10 including the Debtors, the prevailing purchaser, and the
11 U.S. Trustee's Office.

12 And so, here's what the -- and anybody else that
13 the Debtor's consider appropriate, I would like to not have
14 to deal with a fight over the contents of the proposed
15 order. So, any modifications from that which was submitted
16 with the motion, should be submitted in redline, so that I
17 can readily see it. And then also, in a clean version in
18 Word.

19 Okay. So, the following is the oral ruling of the
20 Court in brief form, while also incorporating the proposed
21 order that I anticipate entering.

22 Before the Court is a motion to approve a proposed
23 sale of property free and clear of the Debtor's essentially
24 only meaningful asset, at least only meaningful asset, at
25 least if not only asset period.

1 That is the property located at Ninety-Five
2 Madison, a substantial, but under-utilized office building
3 in Manhattan. The Debtor asks -- seeks Court approval post-
4 confirmation of a plan of sale of the premises to a
5 purchaser known as Madison 29, or that's how I'll refer to
6 them, on terms that were recently increased to a cash
7 component of \$65 million, which represents an increase
8 achieved just in the last 24 hours in light of a competing
9 offer that came in from another bidder.

10 The Debtor -- I should say, this bankruptcy was
11 commenced in 2021, and has had a lengthy history. It's been
12 fairly clear for a long time that the best solution for this
13 bankruptcy was going to involve a sale of the property or an
14 economically equivalent transaction, even if not a fee
15 simple sale.

16 That has been pursued for a very long time,
17 through a variety of means. It's been a very contentious
18 case. And the Court confirmed a plan of reorganization that
19 specifically included an outside date for the completion of
20 a transaction that's now sought to be approved of June 30th,
21 2024.

22 For a specific and litigated reason, constituents
23 of the bankruptcy estate have waited a long time to be paid
24 and objected to any longer process. And the Court agreed
25 that allowing an even more open-ended process would be an

1 unjust imposition on them, particularly because here, with
2 the economics of this case, unsecured creditors are being
3 paid in full. And the marginal benefit of the form of sale
4 or other transaction and/or the proceeds will be realized by
5 the partners in the -- essentially, the owners of the
6 property, which is owned by a consortium of generally --
7 basically three partners.

8 The motion is governed by Section 363(b) of the
9 Code. And the applicable standard is that a judge
10 determining a Section 363(b) application must expressly find
11 from the evidence presented before him at the hearing a good
12 business reason to grant such an application, in re Lionel
13 Corp., 722 F.2d 1063 at 1071 (2d Cir. 1983).

14 There must be some articulated business
15 justification other than appeasement of major creditors for
16 using, selling, or leasing property out of the ordinary
17 course of business before the Bankruptcy Judge may order
18 such disposition under Section 363(b). Id. at 1070.

19 And the Second Circuit also has held that a sale
20 of a substantial part of a Chapter 11 estate other than in
21 the ordinary course of a business may be conducted if a good
22 business reason exists to support it, In re Gucci, 126 F.3d
23 380 at 387 (2d Cir. 1997), citing Lionel.

24 Lionel articulated four factors that judges
25 typically evaluate on -- in considering 363 sale motions.

1 These are the proportionate value of the asset to the estate
2 as a whole, the amount of elapsed time since the filing, the
3 likelihood that a plan of reorganization will be proposed
4 and confirmed in the near future, here we're post-
5 confirmation. The effect of the proposed disposition on
6 future plans of reorganization, the proceeds to be obtained
7 from the disposition, vis-a-vis any appraisals of the
8 property, and a number of others. 722 F.2d at 1071. This
9 list is not intended to be exclusive, but merely to provide
10 guidance to the bankruptcy judge. Id.

11 And the Court should consider all salient factors
12 pertaining to the proceeding and accordingly act to further
13 the diverse interests of the Debtor, creditors, and equity
14 holders alike. Id.

15 Here, I'm satisfied that the Debtor has formed and
16 articulated a -- its -- in its own exercise of its business
17 judgment, what it believes to be good business reason to
18 proceed with the sale and the proposed purchaser that it
19 wishes to proceed with. And the Court is satisfied that
20 these -- the applicable standards are met.

21 The -- it's clear that the solution being advanced
22 will generate sufficient funds, more than sufficient funds
23 to meet the needs of the estate and its creditors, and in
24 fact, will generate an appreciable surplus for the benefit
25 of the, I'll just call them the owners of the property

1 through their partnerships.

2 I know from having lived this case over which I've
3 presided, that the Debtor here engaged in a sale and
4 marketing process beginning in way back in 2022 with, as I
5 commented earlier on the hearing, the assistance of a highly
6 respected real estate professional, Mr. Heller, retained
7 through Branton Realty Services, and substantial work was
8 done in attempting to cultivate a transaction.

9 There was a lot of inter-partner difficulty and
10 contention that seems to have subsided, which I'm glad to
11 see. But at any rate, I am satisfied here. There were
12 comments made suggesting that an auction process would have
13 been better. And I agree that often an auction process is a
14 superior mechanism. But here, the Debtor made the
15 determination not to do that, partly, I think, because it
16 engaged in such a robust and long-running private marketing
17 process that there was little gain to be had in the present
18 circumstances through an auction process. And in addition,
19 I think experiences demonstrated that this Debtor had a very
20 difficult time finding a ready, willing, and able and
21 adequately funded and lucrative purchaser to warrant a
22 transaction.

23 And I'm confident and satisfied that the Debtor
24 has engaged in a sound practice, a robust marketing practice
25 that gives me confidence that this sale results from and

1 achieves a reasonable approximation of market value.

2 So, another way of putting that more simply is,
3 yes, I generally think auctions are best and are preferred,
4 but here, the Debtor engaged in such a lengthy and energetic
5 marketing process that we have the functional equivalent of
6 an auction outcome already.

7 There've been no economic objections filed to the
8 proposed sale, but some concerns voiced during the course of
9 the hearing, including with respect to the modified terms
10 that were recently negotiated by the Debtor with its
11 original proposed purchaser, including beneficially for the
12 estate, of course, an increased purchase price, but also a
13 liquidated damages provision to protect the purchaser in
14 connection with its agreement to increase its purchase
15 price.

16 I again am satisfied that the modified terms are
17 reasonable exercises of the Debtor's business judgment in
18 that to secure a higher purchase price and lock in what it
19 considers to be the most reliable purchaser or the
20 purchaser, as Mr. Glenn put it, who presents the least
21 execution risk, it was a worthwhile and relatively low risk
22 commitment to put up a liquidated damages -- to agree to a
23 liquidated damages figure of \$3.25 million in exchange for
24 achieving a substantial increase in purchase price and
25 securing the relative certainty of closing they have

1 negotiated for.

2 So, I am satisfied that that is a specific
3 instance of a reason to exercise of business judgment.
4 There's been no formal objection to that. But to the extent
5 there is any such objection, it's overruled for that reason.

6 I'm -- that brings me around to the two limited
7 objections that were filed to the proposed sale. One was
8 filed by the Office of the U.S. Trustee, and it's been
9 resolved based on clarifications made on the record today,
10 and I think in conversations before the hearing. To the
11 extent it's not resolved, the objection is overruled. I
12 appreciate the efforts and the process policing activity of
13 the U.S. Trustee's Office, as I always do, in guarding
14 against any unwarranted expansion of the exculpation clause.

15 But the clarifications that have been made on the
16 record make clear that the topical limits of the exculpation
17 clause are not exceeded -- you know, have not been expanded
18 and it's just -- we're just ensuring that those protections
19 go right through the sale that's being approved here today.

20 I'm going to turn to the limited objection filed
21 by Branton. And I'm also going to overrule that limited
22 objection. That limited objection sought a requirement
23 being attached to the Court's approval of the sale that
24 proceeds of the sale be escrowed to protect Branton against
25 any potential future expense it might incur through

1 litigation or otherwise that would trigger an entitlement it
2 might have to indemnification.

3 Branton is not -- has confirmed on the record that
4 it is not now the subject of any litigation, nor is it aware
5 of any threatened litigation. Further, we have reassurances
6 from Mr. Karcher on behalf of RAS, the RAS entity that
7 there's no intended claim, nor -- and we have a
8 representation by Mr. Glenn that neither of the other
9 general partners (indiscernible) -- it's either general --
10 is it general or limited, Mr. Glenn? You're on mute --

11 MR. GLENN: General, general, general.

12 THE COURT: -- but I read your lips, general. So,
13 neither of the other two general partners (indiscernible) to
14 pursue any claim, either. I hope that provides some
15 reassurance to the Branton firm. But I'll also say it makes
16 the potential exposure for which the Branton firm seeks
17 protection seemingly to the Court unlikely.

18 Further, the -- this case is post-confirmation.
19 The confirmation order authorized a distribution process and
20 mechanism which is not being varied through the sale
21 process. All that's happening is a sale is happening to
22 realize benefits and value for the estate. And with the
23 proceeds to be then distributed according to the previously
24 approved plan process.

25 So, the sale, in my thinking, does not present an

1 appropriate time to inject new substantive protections for
2 Branton. I -- I'll just -- oh, I should further add,
3 they're -- I'm not holding whether Branton was or was not a
4 fiduciary of the estate that's entitled to protection under
5 the exculpation clause. I think there's at least a
6 substantial argument that they are. And I got a slightly
7 equivocal confirmation of that from Debtor's counsel. But
8 whether that is or is not the case, I still conclude that
9 Branton's entitlements are too speculative and contingent to
10 warrant commitment in escrowing of estate funds as a
11 condition of this sale. I just don't see a legal basis to
12 inject that as a requirement for this sale.

13 I just want to touch on a couple of other aspects
14 of the relief sought. One is that -- I'll -- oh, I'll
15 explicitly say that I've first sought this sale as proposed
16 to be free and clear of any interest in such property under
17 Section 36 -- excuse me -- Section 363(f) of the Code. I've
18 reviewed the transaction and the papers against the backdrop
19 of Section 363(f), which has five subparts written in the
20 disjunctive and permit a sale to be free and clear of
21 interest if any of those five conditions are met. See *In re*
22 *Borders Group Inc.*, 453 B.R. 477 at 483 (Bankr. S.D.N.Y.
23 2011).

24 One such subpart is that a sale can be completed
25 free and clear, if such interest is a lien, and the price at

1 which such property to be sold is greater than the aggregate
2 value of all liens on such a property. That's 363 (f)(3).

3 Debtor has shown that the value of the sale
4 proceeds, and I find that the value of the sale proceeds
5 that are anticipated, \$65 million, will be sufficient to
6 satisfy all allowed claims in full and any -- and the
7 encumbrance on the property that is now held by the DIP
8 lender, which is the only encumbrance.

9 There's been no showing or introduction of any
10 evidence to the contrary of any lien or other interest in
11 the property held by any that would render the proceeds not
12 more than sufficient to meet that prong of 363(f), namely,
13 subsection 3. And therefore, a free and clear sale is
14 permissible under the Code.

15 The Debtor does list a limited number of permitted
16 encumbrances that the purchaser will accept and assume.
17 Those appear economically minor and to the extent they
18 haven't been modified through further negotiations, don't
19 undermine the Court's conclusion with respect to 363(f)(3).

20 I'll also note that the motion seeks protections
21 under Section 363(m) and (n), aimed at protecting a good
22 faith purchaser's interest in property preserved from a
23 Debtor under Section 363(b). The Second Circuit applies the
24 good faith exception to a buyer who purchases the assets for
25 value in good faith and without notice of adverse claims.

1 In re Gucci 126 F.3d at 389. And good faith is demonstrated
2 by integrity of conduct throughout the course of sale
3 proceedings. Id at 390.

4 The Debtor has made a showing of the marketing and
5 sale process that gives the Court an adequate basis to
6 conclude that the requested finding of good faith is
7 appropriate, and in other words, that the good -- the
8 purchaser is proceeding in good faith as required by the
9 Code. That includes a lengthy and arm's length negotiation
10 process, at various times, including with the assistance of
11 real estate professionals. And there's no indication of
12 misconduct. Moreover, no one objected or came forward and
13 presented evidence of any misconduct, notwithstanding the
14 properly noticed request for a finding of good faith that
15 accompanied this motion.

16 Let me -- what that brings us down to is a request
17 for waiver of the stay that would otherwise apply to the
18 sale under Rule 6004(h) and 6006(d). Ordinarily, Rule
19 6004(h) stays an order authorizing a sale of the property
20 for 14 days after entry of the order unless the Court orders
21 otherwise. And Rule 6006(d) has similar effect with respect
22 to leases.

23 Let me ask Mr. Glenn, do -- are you -- is --
24 what's the practical need for that at this point?

25 MR. GLENN: I -- look, I think that practically

1 speaking, the earliest I think we could close is mid-May.
2 And so, you know, obviously we want there to be no stay once
3 we're ready to close. I thought, you know, we can't get a
4 stay of something that is not imminent to close. So that's
5 what we're kind of balancing here.

6 I mean, it may be, you know, early June before we
7 close, so it's -- you know, we'll have to see how it plays
8 out. But you know, the tenants have to exit, and then we
9 have 10 days after that. We believe that the tenants are
10 going to exit by, you know, June 1st at the absolute latest,
11 probably mid-May. So that's when the closing would occur.
12 And we can update everybody as we get closer to that, but
13 that's the practical reality.

14 THE COURT: Okay. Let me ask this. My ordinary
15 practice is, I very often waive the stay, if -- in unopposed
16 sales. However, I'm mindful of preserving people's rights
17 to pursue appellate rights if they want to, if they've
18 objected, and I'm also very mindful of not imposing a time
19 pressured burden on District Court colleagues in the event
20 of an appeal.

21 So, let me ask this. Does anyone who has appeared
22 at today's hearing object to the entry of -- to the approval
23 of a waiver of the 14-day stay period? I'll pause. And I -
24 - okay, no one's saying yes. And I'm just going to say a
25 sentence, and then I'll give you another chance.

1 The reason I'm asking this is, my inclination is
2 to approve the requested waiver of the stay under Rule
3 6004(h) and 6006(d). However, anyone -- if there exists
4 anyone who wants to pursue an appeal or may want to pursue
5 an appeal, I will give you a chance to object to that waiver
6 of the immediate effectiveness, and thereby preserve your
7 unharried appellate rights. But, if you don't let me know
8 that you may want to do that, I'm going to approve the
9 immediate effectiveness of the order. So, with that more
10 long-winded explanation, is there anyone who objects to the
11 waiver of the otherwise applicable stay?

12 MR. ROSENBERG: Your Honor, Arthur Rosenberg,
13 Holland and Knight on behalf of my client. I'm not sure
14 what they -- how they want to proceed here. I'm not telling
15 you they are going to appeal, but I'm not telling you
16 they're not going to appeal. So --

17 THE COURT: Okay. I can also modify it. I
18 understand, and I want to make clear, I am fully committed
19 to preserving people's rights. I question whether your
20 client has any viable rights here, but would it be adequate
21 to meet your needs if I modified the 14-day period to seven
22 days, without prejudice to further extension request if
23 needed?

24 MR. ROSENBERG: Sure, Your Honor, yes. That would
25 be fine, Your Honor.

1 THE COURT: Okay. That'll get people a little
2 closer to where they want to go. That is -- that'll give
3 people a little assurance that they will want sooner rather
4 than later but give you an opportunity. Does anybody
5 object? Now we're up to a seven-day period. Does anyone
6 object to that? I'll --

7 MR. GLENN: Your Honor --

8 THE COURT: Hang on, Mr. Glenn. And I'll -- let
9 me just hear if any other participants in the hearing, and
10 then I'll come back to you. Okay, no one else said yes, so
11 go ahead, Mr. Glenn.

12 MR. GLENN: So, I just -- so the record is clear,
13 Mr. Rosenberg's client is a frustrated competitive bidder.
14 I believe under applicable law he doesn't have standing to
15 object. I'm sure he disagrees with me, and that's not a
16 question that needs to be answered today, but I just didn't
17 want to leave today without that position being articulated
18 on the record.

19 THE COURT: Right. I put it more equivocally,
20 partly because I don't want to make advisory rulings, but I
21 -- you heard me I'm sure say I'm not sure what appellate
22 rights Mr. Rosenberg's client could have. But nevertheless,
23 I think it's just sound practice to allow a seven-day
24 effectiveness period. So, I'll ask you to modify the
25 proposed order to do that, as opposed to 14, but not zero,

1 okay?

2 And but I will say, Mr. Rosenberg, before you
3 proceed, you know, check out your client's entitlements
4 pretty carefully because I have some real questions about
5 that, as obviously does Mr. Glenn, okay?

6 MR. ROSENBERG: No, I hear you loud and clear,
7 Your Honor.

8 THE COURT: Okay. Mr. Glenn, let me ask -- so
9 that -- let me say, that concludes my oral ruling. I like
10 to say that sentence for transcript purposes, with a couple
11 of periods of colloquy injected in there. But is there
12 anything else I need to do or hold today?

13 MR. GLENN: So, we do have some fee applications?
14 I don't know that any of them --

15 THE COURT: Oh, oh, I'm sorry, yes.

16 MR. GLENN: -- (indiscernible) objections, but I -
17 - just so everybody's on the phone, on the Zoom now, given
18 the late-breaking amendments to the terms of the purchase, I
19 think what our inclination would be is not to do a -- not to
20 do an amendment to the purchase agreement itself, but to
21 just put this all in an order, which we will circulate to
22 everybody before submitting it, hopefully to the Court this
23 afternoon. And subject to that, I think it's just the fee
24 applications at this point.

25 THE COURT: Okay, yeah. The -- I had thought we

1 would do the fee apps first, so they left my head. And it's
2 been a long time talking about the sale. So, let me ask
3 this. There was -- it may be that two were unopposed and
4 one was opposed. And then there's one that met -- got a
5 significant objection, and you may have worked that out.
6 Where are -- can you just tell me where you are on the fee
7 apps?

8 MR. GLENN: I'm going to turn it over to my
9 colleague, who's been handling the fee apps, Naznen Rahman.
10 And the other professionals have representatives on the
11 phone, on the Zoom, and they can clarify --

12 THE COURT: Okay, hang on a second. I think --
13 I'm going to guess Mr. Missry wants permission to leave.

14 MR. MISSRY: We do. Yes, Your Honor.

15 THE COURT: Okay, yes. So, anyone -- thank you.
16 Anyone with no interest in the fee applications is -- and
17 who is only here for the sale is free to go. We've
18 concluded that portion of the hearing, all right?

19 MR. MISSRY: Thank you so much, Your Honor. Take
20 care.

21 THE COURT: Thank you all.

22 MR. MISSRY: Thank you.

23 THE COURT: All right. So, yeah, Ms. Rahman, nice
24 to see you. And yeah, let's turn to the fee applications.
25 You can just let me know where you got in your discussions.

1 MS. RAHMAN: Sure. Good afternoon, Your Honor.
2 For the record, Naznen Rahman, Glenn Agre for the Debtor.
3 We filed our third interim and final fee application at
4 Docket Number 340. No objections were filed, so we filed a
5 CNO and a proposed order.

6 After we received informal comments from the U.S.
7 Trustee, we applied a reduction to the amount sought for the
8 third interim period. And the proposed order reflects that
9 reduction. I believe in footnotes three and four, that's
10 explained.

11 THE COURT: Okay --

12 MS. RAHMAN: For the record -- yeah.

13 THE COURT: Hang on a second. I need you to help
14 orient me. Tell me again which fee application are we
15 talking about at the moment?

16 MS. RAHMAN: The Glenn Agre fee application.

17 THE COURT: Okay, got it. Okay. Got it. So,
18 yes, and you're asking me to approve it as modified through
19 consensual agreement with the U.S. Trustee through informal
20 discussions, right?

21 MS. RAHMAN: Correct.

22 THE COURT: Okay. Mr. Bruh, here you are. Thank
23 you for spending such a long hearing with me.

24 MR. BRUH: (Indiscernible), Your Honor --

25 THE COURT: What's the U.S. Trustee's position on

1 the Glenn Agre application?

2 MR. BRUH: Yeah, thank you, Your Honor. Mark Bruh
3 for the United States Trustee. We reached -- we've resolved
4 all of them. I'll go through the first one with you, as
5 you're asking for it.

6 THE COURT: Okay.

7 MR. BRUH: We did give counsel informal comments
8 about certain objections, the expense, and I believe it was
9 some vagueness and some time work in related to time entries
10 made me -- the amounts set forth on the proposed order in a
11 footnote is the accurate reduction agreed to between the
12 United States Trustee and Debtor's counsel, Your Honor.

13 THE COURT: Okay. And that's on the Glenn Agre
14 one, right?

15 MR. BRUH: Correct.

16 THE COURT: And can you confirm -- you -- maybe
17 Ms. Rahman, that the amount sought for compensation for fee
18 application preparation time is not greater than five
19 percent of the total sought?

20 MS. RAHMAN: Yes, I can confirm that.

21 THE COURT: Okay. Great. Okay. So, does anyone
22 else want to be heard with respect to the Glenn Agre fee
23 application? All right. No one said yes. I'm going to
24 approve it for -- in -- on the modified terms based on the
25 negotiated reduction that's been -- that was worked out.

1 I think -- I appreciate the U.S. Trustee's work in
2 this regard, and I'm satisfied that the requirements for fee
3 award are met here. The work was necessary and appropriate
4 for the benefit of the estate and adequately documented in
5 light of the concerns that were taken into account in
6 negotiations with the U.S. Trustee.

7 And as my one question suggests, I pay particular
8 attention to how much I'm paying people to prepare fee
9 applications, which gives me a nice bright line law rule to
10 apply. And I'm satisfied, based on Ms. Rahman's
11 representation. Okay, so, thanks. You can go ahead with
12 the next one, then, Ms. Rahman.

13 MS. RAHMAN: Your Honor, I'm aware that other
14 professionals have had discussions with the U.S. Trustee
15 regarding their fees but agreed to various discounts.
16 However, we weren't involved in preparing those fee
17 applications.

18 THE COURT: Oh, okay. So, those are -- yeah, so
19 who's going to -- so, I guess we're here on -- we've got --
20 well, is anyone here to speak to the Gruber firm
21 application?

22 MS. POLLACK: Good afternoon, Your Honor, Bonnie
23 Pollack, Cullen and Dykman for Gruber Palumberi Raffaele and
24 Fried. Bart Raffaele is also present.

25 THE COURT: Great.

1 MS. POLLACK: Yeah, Your Honor, the accounts were
2 retained back in 2021, in the three years, did a
3 considerable amount of work as detailed in the application.
4 There was an interim application filed in May of 2023 on
5 Gruber's behalf by the Debtor's former counsel at that time,
6 after he had already been replaced. And it sat dormant for
7 nearly a year.

8 No one ever contacted -- nobody from the Debtor's
9 side ever contacted them to notice it, et cetera. So, we
10 withdrew the interim application and filed the present final
11 one, in which Gruber's seeking -- sought \$247,197.25. We
12 discussed the application with the U.S. Trustee, who had
13 some issues, partly because nobody had ever really discussed
14 with Gruber how to maintain their records.

15 And it was impossible to go back and clarify three
16 years' worth of entries, so we agreed to a reduction of
17 \$37,197.25, to \$210,000, which is approximately 15 percent
18 of the amount sought.

19 THE COURT: Right.

20 MS. POLLACK: Given everything that's transpired,
21 we believe that this is a fair compromise. On April 10th,
22 we filed the proposed order in a letter reflecting that
23 agreement. Unless Your Honor has any questions, we would
24 ask that the application as voluntarily reduced be approved
25 by the Court.

1 THE COURT: Oh okay, thanks. Yeah, no, I reviewed
2 that. Let me ask, does anyone else want to be heard with
3 respect to the Gruber (indiscernible) --

4 MR. BRUH: Your Honor, Mark Bruh with the United
5 States Trustee. I did reach out to counsel regarding
6 concerns in the United States Trustee regarding vague and
7 lumped time, as well as non-compliance with General Order
8 447 because there was -- the applicant did not bill on one-
9 tenth of an hour.

10 So, there were numerous issues here throughout the
11 time that the professional was retained, and that's how we
12 arrived at the amount, the reduced amount then. And we have
13 no objection, Your Honor.

14 THE COURT: Okay.

15 MR. BRUH: That's the agreement we reached.

16 THE COURT: Okay, thanks. So, I'm going to
17 approve the application. I've independently reviewed the
18 submission, and I think there were some issues -- this can
19 happen if people aren't familiar with bankruptcy
20 requirements, with insufficient detail and lumping and the
21 wrong time increments.

22 But I'm satisfied that the negotiated reduction
23 arrived at in discussion with the U.S. Trustee accomplishes
24 an appropriate adjustment in light of those issues, and I'm
25 further satisfied that the remaining fees sought are

1 appropriate and warrant compensation under Section 330 of
2 the Code.

3 So, you can submit a proposed order to our
4 Chambers order email box, and we'll get that process. So,
5 yeah.

6 MS. POLLACK: Thank you.

7 THE COURT: Are you familiar with the -- there's
8 sort of a -- there's a standard format for those in a
9 template. Are you up to speed on that?

10 MS. POLLACK: The form of order?

11 THE COURT: Yeah.

12 MS. POLLACK: Yes, I've practiced before in the
13 Southern District all the time.

14 THE COURT: Just making sure, since you're -- I
15 thought you had it down, but not your client originally.
16 So, yeah, make sure you follow the standard form of order,
17 and that'll make life easy, all right?

18 MS. POLLACK: Thank you, Your Honor.

19 THE COURT: Thank you. Okay, and then we're down
20 to I think the third and final fee application, which is on
21 behalf of the Rosenberg firm. Am I right?

22 MR. GIAMPOLO: Good afternoon, Your Honor. John
23 Giampolo for Rosenberg and Estis regarding its third and
24 final fee application.

25 THE COURT: Right. Nice to see you.

1 MR. GIAMPOLO: Thank you, Your Honor. We've
2 resolved the United States Trustee's objection to our fee
3 application. No other objections were filed or voiced. And
4 we resolved it for a voluntary reduction in the amount of
5 \$21,532.57, which is a 15 percent reduction, which ensures
6 that the total fees paid for preparation of the fee
7 application are five percent or less, and resolves all other
8 issues raised by the United States Trustee, vagueness,
9 lumping, et cetera.

10 THE COURT: Okay. And so, the total amount to be
11 paid is a little in excess -- a little over \$100,000 at this
12 point? What's the total amount?

13 MR. GIAMPOLO: The total amount to be paid, Your
14 Honor, is by my calculation in my revised proposed order
15 that I circulated to the United States Trustee and the
16 Debtor is \$172,508.43. And Your Honor, that is because the
17 -- that -- that's because we -- my firm has not been -- not
18 received payment under the second interim fee application
19 order.

20 THE COURT: Oh yeah, you're combining.

21 MR. GIAMPOLO: Right. Plus, the amount -- the
22 reduced amount for this third and final fee application
23 period comes to \$122,000 -- excuse me -- \$122,017.93.

24 THE COURT: Okay. Got it. All right. Let's see.
25 Let me hear from Mr. Bruh about this one if I may.

1 MR. BRUH: Thank you, Your Honor. Mark Bruh for
2 the United States Trustee. We filed an objection in this
3 one because I -- counsel was away and then I was away, and
4 just in an abundance of caution, I wanted to put something
5 on file, and I just didn't have a chance to engage with
6 informal discussions with counsel after the objection was
7 filed and we set forth three topics.

8 One was the five percent capped. I know Your
9 Honor puts it in, in preparation of fee apps. We saw that
10 there was an increase in the billing rate, and there was a
11 lot of vague and lumped time. counsel did come back to me
12 showing that certain of the time for the prior period, as
13 well as that -- they disclosed the rate increase that was
14 buried in their certification in their fee app, which was
15 not --

16 THE COURT: Right. I saw that, yeah.

17 MR. BRUH: -- proper and maybe going forward, you
18 know, they have to file a notice. So, taking those into
19 account -- into consideration, we've resolved it at the 15
20 percent across the board, Your Honor.

21 THE COURT: Okay, I'm satisfied, and I'll approve
22 the fee application as revised. I will say, the objection
23 filed by the U.S. Trustee I think was pretty well taken. I
24 was concerned with some of the -- I guess I'm sure they
25 picked out some of the more concerning lumped billing

1 entries.

2 I understand from the response, I think the
3 position was, look, I worked -- we worked three hours on
4 essentially a document-driven task and tossed in an email or
5 a phone call here and there all in the same task.

6 But that needs to be teased out and explained. I
7 mean, that's -- and so, that is concerning. But and as well
8 as the fee preparation limit that I imposed. Excuse me.
9 And in the future, make sure you follow the appropriate
10 billing rate notification or disclosure process, okay?

11 But having said all of that, I think the reduction
12 arrived at satisfies all of the concerns I identified coming
13 in. I am satisfied that the remaining amount for which
14 approval is sought is appropriate and justified under
15 Section 330, so it's approved, okay? So, you can just
16 submit your proposed order to Chambers.

17 This hearing's been so long that I've run out of
18 water. Okay. But I think that brings us to a close of a
19 long hearing. Mr. Glenn, anything else you want to raise?

20 MR. GLENN: No, Your Honor. I think we're all
21 set. Thank you very much for your time.

22 THE COURT: Okay, thank you very much. I -- do
23 let me know if and when you successfully close on this
24 transaction. I'll want to see or hear of it. I -- if -- I
25 guess the appropriate formal way to do it is maybe to file a

1 notice of closing having occurred, but --

2 MR. GLENN: We will do that; we will do that.

3 THE COURT: That would be great. All right?

4 Thanks everybody.

5 MR. GLENN: And I think, Your Honor, just one
6 quick housekeeping matter.

7 THE COURT: Sure.

8 MR. GLENN: We put on for status conference in
9 response to Mr. Barr's concern that the sale process was
10 going to drag on, a status conference in mid-June. I think,
11 you know, we'll file a notice of closing, and I don't -- I
12 think we -- do -- we might have set the date, if we did,
13 we'll cancel the date with the Court. I just wanted to note
14 that.

15 THE COURT: Okay. Why don't you keep it in place
16 for now? And because if anything's fallen off the rails,
17 we'll -- I'll want to see you, and if I get a nice notice
18 saying we closed, then you can cancel that. My --

19 MR. GLENN: Very well.

20 THE COURT: -- ever-ready deputy, Ms. Calderon
21 says she doesn't have a date for you in June, so --

22 MR. GLENN: Okay.

23 THE COURT: -- that -- I don't know if that means
24 you didn't schedule it or (indiscernible) --

25 MR. GLENN: We'll set one, we'll set one.

1 THE COURT: Yeah.

2 MR. GLENN: We'll set one, okay.

3 THE COURT: I'm -- yes. So, find a date, and
4 let's get a conference scheduled just to have guardrails in
5 place, okay?

6 MR. GLENN: Okay, thank you.

7 THE COURT: All right. Thanks, everybody. Take
8 care. We're adjourned.

9 MR. GLENN: Bye-bye, thank you, Judge.

10 (Whereupon these proceedings were concluded)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink and is positioned above the printed name.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: April 23, 2024

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